



May 19, 2017

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Notice of *Ex Parte* Meeting

Re: Connect America Fund, WC Docket 10-90; A National Broadband Plan for Our Future, GN Docket 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92; Federal-State Joint Board on Universal Service, CC Docket 96-45; Lifeline and Link-Up, WC Docket 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208

Dear Ms. Dortch:

On behalf of the Ad Hoc Telecommunications Users Committee (“Ad Hoc”), the undersigned and Susan M. Gately, of SMG Consulting LLC, met on May 18, 2017 with Claude Aiken, Wireline Legal Advisor to Commissioner Clyburn; on May 19 with Amy Bender, Wireline Legal Advisor to Commissioner O’Rielly; and on May 19 with Nicholas Degani, Senior Counsel to Chairman Pai and Jay Schwarz, Wireline Advisor to Chairman Pai.

During these meetings, we discussed Ad Hoc’s comments filed in the dockets captioned above on February 14, 2012 and its *ex parte* filings in those dockets on October 4, 2012 and March 30, 2015. Ad Hoc’s filings urge the Commission to restore the historic treatment of 8YY traffic for access charge purposes, pursuant to which carriers are required to apply the per minute charges for terminating traffic to the originating or “open” end of 8YY calls. The Commission itself raised this issue in its Further Notice of Proposed Rulemaking (“*FNPRM*”) for the dockets captioned above¹ and described in detail the competitive distortions at work on the “open” end of 8YY calls. As part of our discussion of these issues, we reviewed the information contained in the attached document.

¹ Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) at para. 1303.



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We also discussed AT&T's recent observation that arbitrage and access stimulation schemes are increasingly shifting to 8YY service in the wake of the Commission's delayed reformation of originating access charges.² The Commission can reduce, if not eliminate, the incentives to use 8YY traffic for such schemes by treating the "open" or originating end of 8YY calls as the terminating end for access charge purposes, for all of the reasons identified by the Commission in the *FNPRM*.

Pursuant to the Commission's rules, this letter has been filed in the above referenced dockets. If you have any questions regarding this submission, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in cursive script that reads 'Colleen Boothby'.

Colleen Boothby

Counsel

Ad Hoc Telecommunications Users Committee

cc: Claude Aiken
Pamela Arluk
Amy Bender
Robin Cohn
Nicholas Degani
Victoria Goldberg
John Hunter
Thomas Parisi
Jay Schwarz

Attachment

² See *Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket No. 16-363 (filed Sept. 30, 2016) at 11.



Completing 8YY Access Charge Reform

8YY Originating Access Charges

- An open issue from the November, 2011 *FNPRM* in the Intercarrier Compensation docket (the “*Transformation Order*”)
- Access charges for 8YY (toll free) calls present unique issues because the customer of toll free service is not the caller
 - Callers are at the originating (“open”) end of the call
 - Customers are at the terminating (“closed”) end of the call
- The payor cannot pick the provider of the originating access
- The FCC’s historic solution: treat toll free originating minutes like “sent paid” terminating minutes
- Ad Hoc’s position then (and now): continue to treat toll free originating minutes the same as “sent paid” terminating minutes, per the Commission’s practice for the previous 25 years



8YY Originating Access Charges: The 2011 *FNPRM* was correct

- *FNPRM* flagged the rationale for treating toll free traffic differently from “sent paid” traffic:

Para. 1303. Relatedly, we also seek comment on the appropriate treatment of 8YY originated minutes. In the case of 8YY traffic, the role of the originating LEC is more akin to the traditional role of the terminating LEC in that the IXC carrying the 8YY traffic must use the access service of the LEC subscribed to by the calling party. Stated differently, *in the case of 8YY traffic, because the calling party chooses the access provider but does not pay for the toll call, it has no incentive to select a provider with lower originating access rates.* For this reason, we ask parties to address whether we should distinguish between originating access reform for 8YY traffic and originating access reform more generally.

8YY Originating Access Charges: The Past as Prologue, 1986

- The 1986 access charge system included per minute charges (“CCL”) to recover loop costs
- Commission introduced an “O/T split” – originating and terminating minutes were evaluated separately for pricing purposes
- Commission treated toll free originating minutes as terminating minutes for access charge purposes
- Commission recognized that the *originating* end of 8YY calls is tantamount to the *terminating* end of “sent paid” calls
 - Market forces negated: payor cannot pick provider
 - Same marketplace distortion as that identified in the 2011 *FNPRM*
- Codified in the rules for CCL charges (47 CFR § 69.105)

8YY Originating Access Charges: Access Reform, 1997

- *Access Reform Order* reviews the state of play
- Commission again recognizes reversed roles for toll free calls:

“[C]harges for the "open end" originating access minutes for 800 or 888 services are paid by the recipient of the call. Consequently, the Commission has treated incumbent LEC originating "open end" minutes as terminating minutes for access charge purposes....

By continuing to treat "open end" originating minutes as terminating minutes for access charge purposes, we recognize that access customers have limited ability to influence the calling party's choice of access provider. Accordingly, access charges for these "open end" minutes will be governed by the requirements we adopt in this Order applicable to terminating access provided by incumbent LECs.”

8YY Originating Access Charges: CALLS Order in 2000

- The CALLS order re-vamped the access system and eliminated CCL charges entirely for price caps LECs
- Eliminated the only remaining price distinction between originating and terminating access minutes.
- Eliminated *de facto* the applicability of the rule requiring 8YY originating minutes to be treated the same as “sent paid” terminating minutes

8YY Originating Access Charges: *Transformation Order* in 2011

- The ICC Transformation Order reintroduced an O/T split
 - But not through a revival of the CCL rule
 - So the originating/terminating treatment of toll free traffic was not preserved
- The *FNPRM* portion of the *Order* describes the issue and proposes the solution
- When can the Commission close the loop and adopt the solution?

8YY Originating Access Charges: Relevant Citations

Relevant citations:

- 1986 Part 69 Order: WATS-Related and Other Amendments of Part 69 of the Commission's Rules, CC Docket No. 86-1, Report and Order, 51 FR 10839 at para. 53. Codified at 47 C.F.R. § 69.105(b)(1)(iii).
- 1997 Access Reform Order: Access Charge Reform, CC Docket 96-262, Fourth Report and Order in CC Docket 94-1 and Second Report and Order in CC Docket 96-262, 12 FCC Rcd 16642, 62 FR 31939 at paras. 365 and 366.
- 2011 ICC Transformation FNPRM: Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC No.11-161 (rel. November 18, 2011) (“FNPRM”) at para. 1303.